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AHS Medicaid Policy Unit
280 State Drive, Center Building
Waterbury, VT 05671-1000

Submitted via e-mail to: AHS.MedicaidPolicy@vermont.gov

Re: Comments to GCR 19-031

To Whom It May Concern:

On behalf of Dartmouth-Hitchcock Health ("D-HH") system member hospitals, Alice Peck Day Memorial Hospital in Lebanon, NH ("APD") and Cheshire Medical Center in Keene, NH ("Cheshire"), please accept these comments on the Department of Vermont Health Access ("DVHA") Outpatient Prospective Payment System ("OPPS") Update, GCR 19-031.

APD, a member of the D-HH system since 2016, is a critical access hospital ("CAH") located in Lebanon, NH, less than 10 miles from the Vermont border. Given its proximity, APD cares for a proportionately significant number of Vermont residents and Vermont Medicaid beneficiaries. Cheshire, a member of the D-HH system since 2015, is an acute care, community hospital licensed for 169 beds in Keene, NH, less than twenty (20) miles from the Vermont border. Given its proximity, Cheshire treats a significant number of Vermont residents and Vermont Medicaid beneficiaries. According to DVHA's proposed OPPS rates, scheduled to take effect on July 1, 2019, APD and Cheshire will continue to be reimbursed for services provided to Vermont Medicaid patients at a significantly lesser rate than that paid to their in-state peer hospitals. Such disparate treatment is unlawful and unconstitutional.

APD

DVHA proposes to reimburse in-state hospitals that are classified as CAHs for outpatient services at a rate of **113.00%** of the Medicare July 2019 Addendum B rate. By contrast, DVHA proposes to reimburse APD, which is a CAH, for outpatient services at the far lesser rate of **82%** of the Medicare July 2019 Addendum B rate. This discriminatory **31%** disparity amounts to a significant annual shortfall for APD, for no other discernible difference than that APD is not domiciled in Vermont.

Cheshire

DVHA proposes to reimburse in-state PPS hospitals for outpatient services at a rate of **89%** of the Medicare July 2019 Addendum B rate. By contrast, DVHA proposes to reimburse Cheshire, which is a PPS hospital, for outpatient services at the lesser rate of **82%** of the Medicare July 2019 Addendum B rate. This discriminatory **7%** disparity amounts to an annual shortfall for Cheshire, for no other discernible difference than that Cheshire is not domiciled in Vermont.

DVHA's proposed OPPS rates run afoul of both the "dormant" Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. If approved, the proposed rates as applied to APD and Cheshire would codify this unlawful discrimination. We urge DVHA to reconsider the OPPS rates proposed in GCR 19-031 and to bring APD and Cheshire to parity with their in-state peer hospitals.

Thank you for the opportunity to provide this comment.

Sincerely,



John P. Kacavas
Chief Legal Officer and General Counsel
Dartmouth-Hitchcock Health